

CHAPTER 3 RULE MAKING

[Prior to 10/8/86, Commerce Commission[250]]

199—3.1(17A,474) Purpose and scope.

3.1(1) *In general.* These rules shall govern the practice and procedure in all rule-making proceedings of the Iowa utilities board (board).

3.1(2) *Rules of construction.* If any provision of a rule or the application of a rule to any person or circumstance is itself or through its enabling statute held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of the rule are severable.

199—3.2(17A,474) Petition for adoption of rules.

3.2(1) *Petitioner.* Any interested person may petition the board for the adoption, amendment, or repeal of a rule.

3.2(2) *Form of petition.* A petition for rule making shall substantially comply with the form prescribed in board 199—subrule 2.2(1). The original and ten copies of the petition shall be filed with the board.

This rule is intended to implement Iowa Code section 476.2.

199—3.3(17A,474) Commencement of proceedings.

3.3(1) *Commenced by order.* Rule-making proceedings shall be commenced only upon written order of the board. The board may commence a rule-making proceeding by order upon its own motion or upon the filing of a petition for rule making by any interested person.

3.3(2) *Board action on petition.* Within 60 days after the filing of a petition for rule making, the board shall either deny the petition by written order on the merits, stating the reasons therefor, commence by written order a rule making proceeding, or adopt by written order a rule pursuant to Iowa Code section 17A.4(2).

3.3(3) *Notice of rule making.* Upon the commencement by written order of a rule-making proceeding, the board shall, if required by law, cause the required notice of the proceeding to be published in the Iowa Administrative Bulletin.

199—3.4(17A,474) Written statements of position.

3.4(1) *Persons.* Any interested person may file a written statement of position containing data, views, comments, or arguments concerning the proposed adoption, amendment, or repeal of a rule.

3.4(2) *Filing.* The time period, as directed by the board, for filing of written statements of position shall be not less than 20, nor more than 30 calendar days after publication of the notice of rule making in the Iowa Administrative Bulletin. If the publication of a notice of rule making is not required by law, written statements of position may be filed as authorized by the board.

3.4(3) *Form of written statement of position.* A written statement of position shall substantially comply with the form prescribed in board 199—subrule 2.2(2). The original and ten copies of a written statement of position shall be filed with the board.

3.4(4) *Service.* Written statements of position shall be served by the author upon the petitioner, if any, at the time of filing.

This rule is intended to implement Iowa Code section 476.2.

199—3.5(17A,474) Counterstatements of position.

3.5(1) *Petitioner.* The petitioner, if any, may file a counterstatement of position with the board in response to written statements of position.

3.5(2) *Filing.* Counterstatements of position, if any, shall be filed with the board not later than 15 calendar days after the petitioner's receipt of the written statement of position to which the petitioner is responding.

3.5(3) *Form of counter-statements of position.* A counterstatement of position shall substantially comply with the form prescribed in board 199—subrule 2.2(3). The original and ten copies of a counterstatement of position shall be filed with the board.

3.5(4) *Service.* Counterstatements of position shall be served by the petitioner at the time of filing upon the authors of written statements of position to which the petitioner is responding.

This rule is intended to implement Iowa Code section 476.2.

199—3.6(17A,474) Requests for oral presentation.

3.6(1) *Filing.* The time period, as directed by the board, for filing of requests for oral presentation shall be not less than 20, nor more than 30 calendar days after the publication of the notice of rule making in the Iowa Administrative Bulletin.

3.6(2) *Form of requests for oral presentation.* A request for oral presentation shall substantially comply with the form prescribed in board 199—subrule 2.2(4). The original and ten copies of a request for oral presentation shall be filed with the board.

3.6(3) *Action on proper request.* Within 15 calendar days of the filing of a request for oral presentation, the board shall determine if the request is in accordance with Iowa Code section 17A.4. If the board determines that the request complies with section 17A.4, the board shall by written order schedule oral presentation on the rule making and shall cause a notice of the oral presentation to be published in the Iowa Administrative Bulletin. The notice shall state the date, time and place of the oral presentation and shall briefly describe the subject matter of the rule-making proceeding. The oral presentation on the rule making shall be not less than ten calendar days after the publication of the notice. The board shall serve a similar notice on the party requesting oral presentation and on the petitioner, if any.

3.6(4) *Action on improper request.* If the board determines that a request for oral presentation does not comply with Iowa Code section 17A.4, it may by written order deny such request stating the reasons therefor, or it may, in its discretion, grant the request and schedule oral presentation in accordance with the procedures hereinbefore prescribed.

3.6(5) *Action on own motion.* The board may, on its own motion, schedule oral presentation on the rule making in accordance with the procedures hereinbefore prescribed.

This rule is intended to implement Iowa Code section 476.2.

199—3.7(17A,474) Rule making oral presentation.

3.7(1) *Written appearance.* Upon the filing of a written appearance, any interested person may participate in rule making oral presentations in person or by counsel. A written appearance shall be filed not less than five calendar days prior to oral presentation. The board may, in its discretion, waive the filing of a written appearance as a condition precedent to participation in said oral presentation. The general counsel shall not be required to file a written appearance.

3.7(2) *Form of written appearance.* A written appearance shall substantially comply with the form prescribed in board 199—subrule 2.2(15). The original and ten copies of a written appearance shall be filed with the board.

3.7(3) *Oral presentations.* Participants in rule-making oral presentations may submit exhibits and present oral statements of position which may include data, views, comments, or arguments concerning the proposed adoption, amendment or repeal of the rule. Participants shall not be required to take an oath and shall not be subject to cross-examination, provided however, that the board may, in its discretion, permit the questioning of participants by any interested person, and provided further, that no participant shall be required to answer any question.

3.7(4) *Rebuttal and limitations.* The board may, in its discretion, permit rebuttal statements of position and request the filing of written statements of position subsequent to the adjournment of the rule-making oral presentation. The board may limit the time of any oral presentation and the length of any written presentation.

This rule is intended to implement Iowa Code section 476.2.

199—3.8(17A,474) Rule making decisions.

3.8(1) Adoption, amendment or repeal. The board shall by written order adopt, amend, or repeal the rule pursuant to the rule-making proceeding, or dismiss the proceeding in accordance with Iowa Code section 17A.4. The board may, by order, specify the effective date of the adoption, amendment, or repeal of the rule.

3.8(2) Statements. Upon the adoption, amendment, or repeal of a rule or termination of a rule-making proceeding, and if timely written request is filed by any interested person, the board shall issue a formal written statement of the principal reasons for and against the adoption, amendment, or repeal of the rule, or termination of the rule-making proceeding, including the reasons why the board overruled the positions in opposition to the board's decision. A request for statement shall substantially comply with the form prescribed in board 199—subrule 2.2(5).

199—3.9(17A,474) Regulatory flexibility analysis.

3.9(1) For purposes of these rules “*small business*” shall have the same definition as in Iowa Code section 17A.31(1).

3.9(2) Published notice of small business impact. If the board proposes a rule which may have an impact on small business, the notice of intended action shall expressly recite this possibility and describe the procedure to be followed for making a timely request for a regulatory flexibility analysis to the board.

3.9(3) Registration for the small business impact list. Small businesses or small business organizations as defined in Iowa Code section 17A.31 may register to be included on the board's small business impact list by making a specific, written request addressed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The request for registration shall state:

- a. The name of the small business or small business organization.
- b. Its address.
- c. The name of a person authorized to transact business for the requesting party.
- d. A description of the requesting party's business or its organizational purposes.

The board may request additional information from the applicant to determine whether the applicant is qualified as a small business or a small business organization. The board will send a letter every year to each small business or small business organization on the list asking whether the small business or organization wishes to remain on the list. The name of the small business or organization will be removed from the list if a negative response is received or if no response is received within one month after the letter is sent.

3.9(4) Mailed notice of small business impact. Prior to the publication of a notice of intended action described in subrule 3.9(2), the board shall notify small businesses or small business organizations on the small impact list, by ordinary first-class mail, of the changes it proposes to make to its rules. In the case of a rule made effective under Iowa Code section 17A.4(2) or 17A.5(2) “b,” the board shall provide mailed notice to small businesses or small business organizations on the small business impact list within seven days after publication of the rule.

3.9(5) Request for regulatory flexibility analysis. Requests for regulatory flexibility analysis to reduce the impact of a rule on small business may be made within 20 days after the publication of the notice of intended action.

- a. The board shall entertain a request for a regulatory flexibility analysis from:
 - (1) The governor.
 - (2) The administrative rules review committee.
 - (3) A political subdivision of the state.
 - (4) Twenty-five or more persons who sign the request, provided that each represents a different small business.
 - (5) An organization registered on the small business impact list which represents at least 25 persons.
- b. A request for a regulatory flexibility analysis should specify the proposed rule or portion of the proposed rule for which the analysis is requested.

c. Upon the receipt of a timely valid request for a regulatory flexibility analysis, the board shall consider whether it may reduce the impact of the proposed rule on small business by considering each of the following methods:

- (1) Establishing less stringent compliance or reporting requirements.
- (2) Establishing less stringent schedules or deadlines for compliance or reporting requirements.
- (3) Consolidating or simplifying compliance or reporting requirements.
- (4) Replacing design or operational standards with performance standards.
- (5) Exempting small business from any or all rule requirements.
- (6) Considering the nature and cost of preparation of any required reports weighed against the benefits to be gained from such reports.
- (7) Considering the nature and estimated cost of measures or investments required of small business for compliance, weighed against the benefits to be gained.
- (8) Considering the nature and estimated cost of professional, legal, consulting or accounting services incurred for compliance, weighed against the benefits to be gained.
- (9) Considering the probable cost to the board or any other agency of the implementation and enforcement of the rule and its anticipated effect on state revenue.
- (10) Comparing the possible cost and benefits which would accrue from a proposed rule as opposed to the probable effect of inaction.
- (11) Determining whether the purposes sought by the board might be achieved by other less costly or less intrusive methods.
- (12) Describing alternative methods seriously considered by the board, and the reasons that such methods were rejected in favor of the proposed rule.
- (13) Considering any other method provided by a requesting party which is legal and feasible in meeting the statutory objective which is the basis of the proposed rule.

d. When the board is required to issue a regulatory flexibility analysis of a proposed rule, the board shall cause to be published a concise summary of the regulatory flexibility analysis in the Iowa Administrative Bulletin at least 20 days prior to the adoption of the proposed rule. In the case of a rule made effective under Iowa Code section 17A.4(2) or 17A.5(2)“b,” the board shall publish the summary within 90 days after the publication of the rule. The published summary shall state how interested persons may obtain the full text of the board’s analysis at cost. The published summary shall also fix a time and place where interested persons may make an oral presentation on the analysis.

These rules are intended to implement Iowa Code sections 474.1, 474.10, 476.2 and 546.7.

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